

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 17, 2001

GSBCA 15392-TRAV

In the Matter of JAMES K. RILEY

James K. Riley, Louisville, KY, Claimant.

Ronald L. Buckman, Finance & Accounting Officer, United States Army Engineer District, Louisville, Corps of Engineers, Department of the Army, Louisville, KY, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

James K. Riley is a civilian employee of the Army Corps of Engineers' Louisville (Kentucky) District. He claims entitlement to reimbursement for costs of travel in his privately-owned vehicle, and to payment of a per diem allowance, on two occasions during the spring of 2000. The Corps refused to pay either element of the claim.

On the afternoon of April 16, 2000, Mr. Riley reported for duty at Markland Locks and Dam, Kentucky. According to the employee, Markland is twenty-two miles (one hour or less by car) from his home. He boarded a Corps towboat, on which he worked while the craft moved downstream on the Ohio River, then back upstream, before returning to Markland the next morning. Mr. Riley then got in his car and returned home. The employee engaged in a similar routine on May 18, 2000. Mr. Riley notes that on each occasion, he worked on the boat, away from his home and permanent duty station, for fifteen hours. He further notes that the Corps did not provide any meals during this time.

The issue of reimbursement for travel costs is addressed by the Joint Travel Regulations (JTR), which apply to all Department of Defense civilian employees. JTR C1001-A.2. Under the JTR, when an employee uses his own vehicle for travel between his residence and an "alternate work site[] within the local area, the employee shall be paid mileage for the distance that exceeds the employee's commuting distance." Id. C2401-C (Nov. 1, 1997) (current version expresses same concept in different words). The term "local area" includes not only the commuting area of the duty station, but also "separate cities, towns, or installations adjacent to or close to each other, within which the commuting public travels during normal business hours on a daily basis." Id. C2400-B.

An installation only twenty-two miles from Mr. Riley's residence appears to qualify as within the "local area" of that residence, for purposes of this regulation. Consequently, Mr. Riley is entitled to be paid, on a per mile basis, for the distance he drove to and from Markland Locks and Dam, less the distance he would have driven if he had instead commuted to and from his permanent duty station.

The issue of payment of a per diem allowance is addressed by an order of the Ohio River Division of the Corps of Engineers, which includes the Louisville District, where Mr. Riley works. This order says:

Per diem will not be paid under any circumstances to any employee who travels to any location within the designated official duty station area. Therefore, in order to qualify for per diem, the traveler must meet all of the following requirements.

(1) The alternate duty site (TDY [temporary duty] point) must be [a] point outside the commuting distance of the permanent duty station. The commuting distance is considered to be within one hour's driving time from the permanent duty station.

(2) The traveler must be away from home more than 10 hours a day.^[1]

(3) Travel from the traveler[']s residence to the TDY point must exceed the commuting distance, one hour's driving time.

CEORDR 55-1-1 (Aug. 1, 1991) ¶ 2-11(c).

The Corps asserts that Mr. Riley's drive to Markland Locks and Dam does not meet the third of these requirements for per diem eligibility, in that it does not exceed one hour. Thus, according to the agency, the employee may not receive an allowance, even though on each occasion he was away from home for more than twelve hours. Mr. Riley contends that the cited agency rule "doesn't apply to me because it takes 12-15 hours to get to [my] destination [downstream, seventy-four miles from his permanent duty station] on a towboat traveling one and a half to six miles per hour."

We think the agency's understanding makes more sense. Once Mr. Riley boarded the towboat, he was at his place of employment for the day. It is true that the place of employment moved on the river, that the employee had to bring his own food with him, and that the work day was quite long. These facts do not, however, make Mr. Riley's situation any different from that of any employee who must put in a long day at the office. This man's travel (other than his drive to and from the Locks and Dam) was not for the purpose of getting somewhere to do work -- it was his work. A per diem allowance was properly not paid in this situation.

¹A change in the Federal Travel Regulation, subsequent to the date of the Corps Division's order, makes this figure twelve hours. See 41 CFR 301-11.1(c), -11.2 (1999).

STEPHEN M. DANIELS
Board Judge